

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

VICTOR HERNANDEZ,) NO. CV 00-04572-VBK
)
Plaintiff,) ORDER AWARDING ATTORNEY FEES
)
) PURSUANT TO 42 U.S.C. §406(b)
v.)
)
MICHAEL J. ASTRUE,)
Commissioner of Social)
Security,)
)
Defendant.)
)

I

INTRODUCTION

20 On January 7, 2001, United States Magistrate Judge James W.
21 McMahon approved the parties' stipulation that Plaintiff's
22 application for Social Security benefits be remanded to the
23 Defendant Commissioner for further proceedings. On remand, the
24 Commissioner awarded Plaintiff past due benefits of \$50,706.00. (See
25 Petition for Authorization Attorney Fee Pursuant to 42 U.S.C.
26 §406(B), as Amended ["Petition"], Attachment 2.) Now pending before
27 the Court is the Petition of Plaintiff's counsel, Jimmy Ogbonna
28 Ewenike, for attorney fees pursuant to 42 U.S.C. §406(b) in the

amount of \$12,676.50 for his representation of Plaintiff in this matter.

The Commissioner has filed a Response which neither opposes nor supports the Petition, but carefully analyzes applicable factors as established in Gisbrecht v. Barnhart, 535 U.S. 789, 798, n.6, 122 S. Ct. 1817 (2002).

II

DISCUSSION AND ANALYSIS

Plaintiff's counsel brings this petition pursuant to 42 U.S.C. §406(b), which provides in relevant part:

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment.

In *Gisbrecht*, supra, the Supreme Court resolved a division among the federal circuits on the appropriate method of calculating attorney fees under §406(b). Rejecting the "lodestar method" which several of the circuits (including the Ninth Circuit) had been applying, the Supreme Court held:

[Section] 406(b) does not displace contingent-fee agreements as the primary means by which fees are set for successfully representing Social Security benefits claimants in court. Rather, §406(b) calls for court

1 review of such arrangements as an independent check,
2 to assure that they yield reasonable results in
3 particular cases. Congress has provided one boundary
4 line: Agreements are unenforceable to the extent that
5 they provide for fees exceeding 25 percent of the
6 past-due benefits... Within the 25 percent
7 boundary,...the attorney for the successful claimant
8 must show that the fee sought is **reasonable for the**
9 **services rendered.**

10 122 S.Ct. at 1828 (emphasis added).

11
12 Plaintiff's counsel has provided to the Court a contingent fee
13 agreement (see Attachment 3). Under that fee agreement, it is
14 provided, in pertinent part, that Plaintiff "shall pay not exceeding
15 25% [of the past-due benefits that are awarded]." The fee paid
16 under the contingent fee agreement must be approved by the federal
17 court. In determining whether the award of \$12,676.50 sought by
18 Plaintiff's counsel is "reasonable for the services rendered" in
19 this case, the Court has considered a number of factors, several of
20 which fall in favor of Plaintiff's counsel.

21 First, under the terms of the contingent fee agreement between
22 Plaintiff and Plaintiff's counsel, Plaintiff's counsel would be
23 entitled to fees corresponding to 25% of the back benefits awarded.
24 Plaintiff agreed to the 25% contingency and the \$12,676.50 award
25 sought represents the agreed upon amount. The Court has no basis
26 for finding that there was any fraud or overreaching by counsel in
27 the making of the contingent fee agreement with Plaintiff.

28 Second, the \$12,676.50 award sought by Plaintiff's counsel is

1 not in excess of the 25% statutory limit. Indeed, as stated, the
2 fees sought amount to 25% of Plaintiff's recovery and comport with
3 the terms of the contingent fee agreement between Plaintiff and
4 counsel.

5 Third, the procedural history of this case indicates that there
6 is no excessive delay attributable to counsel which would unduly
7 increase the back benefits accumulated during the pendency of the
8 case in court. Indeed, Plaintiff's counsel was diligent in pursuing
9 this matter. The letter brief prepared by Plaintiff's counsel on
10 October 3, 2000 (Attachment 1) is thorough and well reasoned, and
11 ultimately resulted in achieving its intended result. The Court has
12 considered, pursuant to the holding of Gisbrecht, both the character
13 of the representation and the results achieved by Plaintiff's
14 counsel, and finds these factors to weigh strongly in favor of
15 Plaintiff's counsel.

16 Fourth, the Court has considered the number of hours expended
17 by counsel in this case. Counsel indicates he expended 32.5 hours
18 of attorney time. The Court agrees that these hours are consistent
19 with general practice in cases such as this. Plaintiff's counsel
20 has provided a usual hourly rate for his services, and the effective
21 hourly rate he is now seeking (\$391.00) represents only a 1.564
22 multiple, which is reasonable considering the risk counsel assumed
23 in undertaking this case. This amount is consistent with an
24 effective hourly rate awarded to attorneys in Social Security cases
25 in this District, and is therefore found to be reasonable, in
26 particular, considering also the expertise provided by Plaintiff's
27 counsel in these matters.

III

CONCLUSION

Based upon the foregoing considerations, the Court finds and concludes that the \$12,676.50 in gross fees sought by Plaintiff's counsel is reasonable. The petition for \$12,676.50 in gross attorney fees pursuant to 42 U.S.C. §406(b) is **GRANTED**. This amount is to be reduced by the \$3,500.00 in EAJA fees previously awarded, resulting in a net fee award of \$9,176.50. The Commissioner shall pay such amount to Plaintiff's counsel.

IT IS SO ORDERED.

DATED: October 5, 2009 _____ /s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE